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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 4260

13
14 **YESENIA RODARTE**
15 **12001 Foothill Blvd, SP 20**
16 **Sylmar, CA 91342**
17 **Pharmacy Technician Registration No. TCH**
18 **84759**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

19
20
21 Respondent.

22 **FINDINGS OF FACT**

23 1. On or about August 31, 2012, Complainant Virginia K. Herold, in her official
24 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,
25 filed Accusation No. 4260 against Yesenia Rodarte (Respondent) before the Board of Pharmacy.
26 (Accusation attached as Exhibit A.)

27 2. On or about August 2, 2008, the Board of Pharmacy (Board) issued Pharmacy
28 Technician Registration No. TCH 84759 to Respondent. The Pharmacy Technician Registration

1 was in full force and effect at all times relevant to the charges brought in Accusation No. 4260
2 and expired on March 31, 2012. This lapse in licensure, however, pursuant to Business and
3 Professions Code section 118(b) does not deprive the Board of its authority to institute or
4 continue this disciplinary proceeding.

5 3. On or about September 18, 2012, Respondent was served by Certified and First Class
6 Mail with copies of the Accusation No. 4260, Statement to Respondent, Notice of Defense,
7 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
8 and 11507.7) at Respondent's address of record which, pursuant to Business and Professions
9 Code section 4100, is required to be reported and maintained with the Board. Respondent's
10 address of record was and is:

11 12001 Foothill Blvd, SP 20
12 Sylmar, CA 91342.

13 4. Service of the Accusation was effective as a matter of law under the provisions of
14 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
15 124.

16 5. Confirmation of service was received by the Office of the Attorney General in or
17 about September, 2012 and was signed on September 20, 2012, by "Maria Rodarte". None of the
18 aforementioned documents were returned by the U.S. Postal Service.

19 6. Government Code section 11506 states, in pertinent part:

20 (c) The respondent shall be entitled to a hearing on the merits if the respondent
21 files a notice of defense, and the notice shall be deemed a specific denial of all parts
of the accusation not expressly admitted. Failure to file a notice of defense shall
constitute a waiver of respondent's right to a hearing, but the agency in its discretion
may nevertheless grant a hearing.

22 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
23 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4260.

24 8. California Government Code section 11520 states, in pertinent part:

25 (a) If the respondent either fails to file a notice of defense or to appear at the
26 hearing, the agency may take action based upon the respondent's express admissions
27 or upon other evidence and affidavits may be used as evidence without any notice to
28 respondent.

9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 4260, finds that the charges and allegations in Accusation No. 4260, are separately and severally, found to be true and correct by clear and convincing evidence.

10. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$3527.50 as of January 22, 2013.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Yesenia Rodarte has subjected her Pharmacy Technician Registration No. TCH 84759 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician Registration based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case:

a. Unprofessional Conduct - Illegal Possession of Controlled Substances in violation of Business and Professions Code sections 4300 and 4301, subdivision (o), for violating section 4060.

b. Unprofessional Conduct - Use of a Controlled Substance without a Valid Prescription in violation of Business and Professions Code sections 4300 and 4301, subdivision (h).

c. Unprofessional Conduct - violation of Business and Professions Code section 4300 and 4301, subdivision (j), for violating provisions of the Health and Safety Code as follows:

1. Section 11170 (furnishing controlled substances for herself), and
2. Section 11173, subdivision (a), (obtaining controlled substances by fraud, deceit or subterfuge).

1 d. Unprofessional Conduct - Acts Involving Moral Turpitude, Dishonesty, Fraud,
2 Deceit and/or Corruption in violation of Business and Professions Code sections 4300 and 4301,
3 subdivision (f).

4
5 ORDER

6 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 84759, heretofore
7 issued to Respondent Yesenia Rodarte, is revoked.

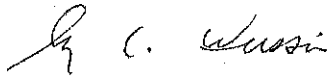
8 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
9 written motion requesting that the Decision be vacated and stating the grounds relied on within
10 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
11 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

12 This Decision shall become effective on April 10, 2013.

13 It is so ORDERED ON March 11, 2013.

14 BOARD OF PHARMACY
15 DEPARTMENT OF CONSUMER AFFAIRS
16 STATE OF CALIFORNIA

17
18 By


19 STANLEY C. WEISSER
20 Board President

21 51227323.DOC
22 DOJ Matter ID:LA2012602629

23 Attachment:
24 Exhibit A: Accusation
25
26
27
28

Exhibit A

Accusation

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2 MARC D. GREENBAUM
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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 4260

13 **YESENIA RODARTE**
12001 Foothill Blvd, SP 20
Sylmar, CA 91342

A C C U S A T I O N

14 Pharmacy Technician Registration No. TCH
15 84759

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

22 2. On or about August 2, 2008, the Board of Pharmacy (Board) issued Pharmacy
23 Technician Registration No. TCH 84759 to Yesenia Rodarte (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and expired on March 31, 2012.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board under the authority of the following
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 118, subdivision (b), provides, in pertinent part, that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 4060 states, in pertinent part:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

"Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices."

6. Section 4300 states, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.

7. Section 4301 states, in pertinent part:

"The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

....

"(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or

1 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
2 whether the act is a felony or misdemeanor or not.

3

4 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
5 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
6 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
7 to the extent that the use impairs the ability of the person to conduct with safety to the public the
8 practice authorized by the license.

9

10 "(j) The violation of any of the statutes of this state, or any other state, or of the United
11 States regulating controlled substances and dangerous drugs.

12

13 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
14 violation of or conspiring to violate any provision or term of this chapter or of the applicable
15 federal and state laws and regulations governing pharmacy, including regulations established by
16 the board or by any other state or federal regulatory agency."

17 REGULATORY PROVISIONS

18 8. California Code of Regulations, title 16, section 1770, states, in pertinent part:

19 "For the purpose of denial, suspension, or revocation of a personal or facility license
20 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
21 crime or act shall be considered substantially related to the qualifications, functions or duties of a
22 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
23 licensee or registrant to perform the functions authorized by his license or registration in a manner
24 consistent with the public health, safety, or welfare."

25 DRUG STATUTES

26 9. Health and Safety Code section 11170 states that "[n]o person shall prescribe,
27 administer, or furnish a controlled substance for himself."

28 ///

10. Health and Safety Code section 11173, subdivision (a), states that "[n]o person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact."

COST RECOVERY

11. Section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation on violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

CONTROLLED SUBSTANCES-DANGEROUS DRUGS

12. "Hydrocodone" is a Schedule II controlled narcotic substance pursuant to Health and Safety Code section 11055, subdivision (b)(I) and a dangerous drug pursuant to section 4022. Preparations containing hydrocodone in combination with other non-narcotic medicinal ingredients are in Schedule III pursuant to Health and Safety Code section 11056, subdivision (e).

13. "Phentermine" a stimulant, with brand names of Adipex and Fastin, is a Schedule IV controlled substance pursuant to the Health and Safety Code section 11057, subdivision (f)(4), and a dangerous drug pursuant to section 4022.

FIRST CAUSE FOR DISCIPLINE

(Illegal Possession of Controlled Substances)

14. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (o), for violating section 4060, on the grounds of unprofessional conduct, in that

Respondent possessed controlled substances without valid prescriptions as follows:

a. On or about between August 15, 2008 and March 4, 2011, Respondent was employed as a full-time pharmacy technician at Bryant Ranch Prepack ("BRP"), a wholesaler pharmacy.

b. BRP audited Respondent's shifts from January 2011 through June 2011 and found losses based upon employee pilferage. A Drug Enforcement Administration form, "Report of Theft or Loss of Controlled Substances", was filed by BRP, reporting Respondent's theft of controlled substances as follows:

	<u>NDC Number:</u>	<u>Trade Name:</u>	<u>Quantity Lost:</u>
1			
2	1. 53746011010	Hydrocodone-Apap 10-325 Tablet	1,741 Tablets
3	2. 63629152903	Hydrocodone-Apap 7.5-750 Tablet	55 Tablets
4	3. 63629158406	Phentermine 37.5 Mg. Tablet	107 Tablets
5	4. 63629317808	Hydrocodone-Acetaminoph 7.5-500	22 Tablets
6		Tablet	
7	5. 537460109	Hydrocodone/apap 5/325 Tablet	21 Tablets

c. On or about July 15, 2011, Respondent admitted to obtaining, possessing and using "Phentermine", a controlled substance and dangerous drug, without a valid prescription.

SECOND CAUSE FOR DISCIPLINE

(Use of a Controlled Substance without a Valid Prescription)

15. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (h), on the grounds of unprofessional conduct, in that in or between January 2011 and June 2011, Respondent used controlled substances, without valid prescriptions. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 14, subparagraphs (a) through (c), inclusive, as though set forth fully.

THIRD CAUSE FOR DISCIPLINE

(Violating Drug Statutes)

16. Respondent is subject to disciplinary action under section 4300 and 4301, subdivision (j), on the grounds of unprofessional conduct, for violating provisions of the Health and Safety Code as follows:

- a. Section 11170, for furnishing controlled substances for herself.
- b. Section 11173, subdivision (a), for obtaining controlled substances by fraud, deceit or subterfuge.

Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 14, subparagraphs (a) through (c), inclusive, as though set forth fully.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit and/or Corruption)**

3 17. Respondent is subject to disciplinary action under sections 4300 and 4301,
4 subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts
5 involving moral turpitude, dishonesty, fraud, deceit and/or corruption. Complainant refers to, and
6 by this reference incorporates, the allegations set forth above in paragraphs 14 through 16,
7 inclusive, as though set forth fully.

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Board issue a decision:

11 1. Revoking or suspending Pharmacy Technician Registration No. TCH 84759, issued
12 to Yesenia Rodarte;

13 2. Ordering Yesenia Rodarte to pay the Board of Pharmacy the reasonable costs of the
14 investigation and enforcement of this case, pursuant to Business and Professions Code section
15 125.3; and

16 3. Taking such other and further action as deemed necessary and proper.

17
18 DATED: 8/31/12



19 VIRGINIA HEROLD
20 Executive Officer
21 Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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